

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION**

TIMMY GEORGE PERKINS,)
Petitioner,)
v.) 1:18-cv-00221-RDP-JHE
WARDEN II DEWAYNE ESTES, et al.,)
Respondents.)

MEMORANDUM OPINION

On April 16, 2018, the Magistrate Judge entered a Report and Recommendation, (Doc. 5), recommending that the petition for writ of habeas corpus be dismissed without prejudice. No objections have been filed.¹ The court has considered the entire file in this action, together with the report and recommendation, and has reached an independent conclusion that the report and recommendation is due to be adopted and approved.

Accordingly, the court hereby adopts and approves the findings and recommendation of the Magistrate Judge as the findings and conclusions of this court. The petition for writ of habeas corpus is due to be **DISMISSED**. A separate Order will be entered.

¹ On May 28, 2018, Petitioner submitted an affidavit. (Doc. 6). Petitioner's objections to the report and recommendation were due by April 30, 2018. (*See* Doc. 5 at 4). To the extent Petitioner's affidavit could be construed as an objection to the report and recommendation, it is untimely. Even considering the substance of the affidavit, though, it does not appear to relate to the report and recommendation at all. The Magistrate Judge recommended the petition be dismissed as successive. (*See* Doc. 5). Instead of addressing the successiveness issue, Petitioner argues in his affidavit that he is entitled to a new trial because inconsistent evidence was presented at his original trial (*see* Doc. 6), which is the merits of his first ground for habeas relief (*see* Doc. 1 at 5). The affidavit does not change the court's conclusion that the petition is due to be dismissed as successive.

DONE and **ORDERED** this June 11, 2018.



R. DAVID PROCTOR
UNITED STATES DISTRICT JUDGE